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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. [redacted] 553

HOPKINS FEDERAL SAVINGS AND LOAN ASSOCIATION, ETC., ET AL.,

Appellants,

vs.

PETER A. CLEARY, S. N. SCHAFER AND H. F. IBACH, CONSTITUTING THE BANKING COMMISSION OF THE BANKING DEPARTMENT OF THE STATE OF WISCONSIN.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN.

STATEMENT AS TO JURISDICTION.

B. F. SALTZSTEIN,
E. J. GROSS,
EMERY J. WOODALL,
LYMAN W. SHERWOOD,
Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 970

HOPKINS FEDERAL SAVINGS AND LOAN ASSOCIATION, ETC., ET AL.,

Appellants,

vs.

PETER A. CLEARY, S. N. SCHAFER AND H. F. IBACH, CONSTITUTING THE BANKING COMMISSION OF THE BANKING DEPARTMENT OF THE STATE OF WISCONSIN.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN.

STATEMENT AS TO JURISDICTION.

MAY IT PLEASE THE COURT:

Pursuant to Rules 12 and 46 of the Supreme Court of the United States, Hopkins Federal Savings and Loan Association, a corporation organized and existing under and by virtue of the laws of the United States of America, by conversion of Hopkins Street Building and Loan Association, a Wisconsin Corporation; Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow and R. J. Teske, as President, Vice-President, Secretary and Treasurer, respectively, and Edw. F. Maertz, N. F. Remmel, A. J. Kitzerow, R. J. Teske, Ed.

Kieckbusch, Arthur J. Techel, Chas. Hafemann, Jr., and Arthur H. Fluck, as Directors of said Hopkins Federal Savings and Loan Association, and their respective successors in office, appellants in this appeal from a decision of the Supreme Court of the State of Wisconsin, made in the above cause, respectfully show the following in support of the jurisdiction of the Supreme Court of the United States to review the aforesaid cause on appeal:

A.

Statutory Provisions Sustaining Jurisdiction.

The Act of Congress approved January 31, 1928, Chapter 14; 45 Stat. 54; U. S. C. Supp., Title 28, Sec. 861a, provides:

> "The writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

The Act of Congress approved April 26, 1928, Chapter 440; 45 Stat. 466; U. S. C. Supp., Title 28, Sec. 861b, provides:

> "The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

The Act of Congress approved February 13, 1925, Chapter 229; 43 Stat. 936; U. S. C. Title 28, Sec. 344(a), amends subsection (a) of Section 237 of the Judicial Code, so that the same provides as follows:

> "(a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit

could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

B.

Statute of the United States, Section of the Constitution of the State of Wisconsin, and Statutes of the State of Wisconsin, the validity of which is involved.

Section 5 of the Act of Congress approved June 13, 1933; 48 Stat. 128, at page 132, as amended by the Act of Congress approved April 27, 1934; 48 Stat. 643; U. S. C. Supp, Title 12, Sec. 1464, provides:

"Sec. 5. (a) In order to provide local mutual thrift institutions in which people may invest their funds and *in order to provide for the financing of homes, the* Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation, of associations to be known as "Federal savings and loan associations," and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States.

"(b) Such associations shall raise their capital only in the form of payments on such shares as are authorized in their charter, which shares may be retired as is

therein provided. No deposits shall be accepted and no certificates of indebtedness shall be issued except for such borrowed money as may be authorized by regulations of the Board.

"(c) Such associations shall lend their funds only on the security of their shares or on the security of first liens upon homes or combination of homes and business property within fifty miles of their home office; *Provided,* That not more than $20,000 shall be loaned on the security of a first lien upon any one such property; except that not exceeding 15 per centum of the assets of such association may be loaned on other improved real estate without regard to said $20,000 limitation, and without regard to said fifty-mile limit, but secured by first lien thereon: *And provided further,* That any portion of the assets of such associations may be invested in obligations of the United States or the stock or bonds of a Federal home-loan bank.

"(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permits its further operation.

"(e) No charter shall be granted except to persons of good character and responsibility, nor unless in the judgment of the Board a necessity exists for such an institution in the community to be served, nor unless there is a reasonable probability of its usefulness and success, nor unless the same can be established without undue injury to properly conducted existing local thrift and home-financing institutions.

"(f) Each such association, upon its incorporation, shall become automatically a member of the Federal home-loan bank of the district in which it is located,

or if convenience shall require and the Board approve, shall become a member of a Federal home-loan bank of an adjoining district. Such associations shall qualify for such membership in the manner provided in the Federal Home Loan Bank Act with respect to other members.

"(g) The Secretary of the Treasury is authorized on behalf of the United States to subscribe for preferred shares in such associations which shall be preferred as to the assets of the association and which shall be entitled to a dividend, if earned, after payment of expenses and provision for reasonable reserves, to the same extent as other shareholders. It shall be the duty of the Secretary of the Treasury to subscribe for such preferred shares upon the request of the Board; but the subscription by him to the shares of any one association shall not exceed $100,000, and no such subscription shall be called for unless in the judgment of the Board the funds are necessary for the encouragement of local home financing in the community to be served and for the reasonable financing of homes in such community. Payment on such shares may be called from time to time by the association, subject to the approval of the Board and the Secretary of the Treasury; but the amount paid in by the Secretary of the Treasury shall at no time exceed the amount paid in by all other shareholders, and the aggregate amount of shares held by the Secretary of the Treasury shall not exceed at any time the aggregate amount of shares held by all other shareholders. To enable the Secretary of the Treasury to make such subscriptions when called there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000, to be immediately available and to remain available until expended. Each such association shall issue receipts for such payments by the Secretary of the Treasury in such form as may be approved by the Board, and such receipts shall be evidence of the interest of the United States in such preferred shares to the extent of the

amount so paid. Each such association shall make provision for the retirement of its preferred shares held by the Secretary of the Treasury, and beginning at the expiration of five years from the time of the investment in such shares, the association shall set aside one-third of the receipts from its investing and borrowing shareholders to be used for the purpose of such retirement. In case of the liquidation of any such association the shares held by the Secretary of the Treasury shall be retired at par before any payments are made to other shareholders.

"(h) Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States, and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local or mutual or co-operative thrift and home financing institutions.

"(i) Any member of the Federal Home Loan Bank may convert itself into a Federal Savings and Loan Association under this Act upon a vote of 51 per centum or more of the votes cast at a legal meeting called to consider such action; but such conversion shall be subject to such rules and regulations as the Board may prescribe, and thereafter the converted association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act.

"(j) In addition to the authority to subscribe for preferred shares in Federal Savings and Loan Associations, the Secretary of the Treasury is hereby au-

thorized on behalf of the United States to subscribe for any amount of full paid income shares in such association, and it shall be the duty of the Secretary of the Treasury to subscribe for such full paid income shares upon the request of the Federal Home Loan Bank Board. Payment on such shares may be called from time to time by the association, subject to the approval of said Board and the Secretary of the Treasury, and such payments shall be made from the funds apropriated pursuant to subsection (g) of this section; but the amount paid in by the Secretary of the Treasury for shares under this subsection and such subsection (g), together shall at no time exceed 75 per centum of the total investment in the shares of such association by the Secretary of the Treasury and other shareholders. Each such association shall issue receipts for such payments by the Secretary of the Treasury in such form as may be approved by said Board and such receipts shall be evidence of the interest of the United States in such full paid income shares to the extent of the amount so paid. No request for the repurchase of the full paid income shares purchased by the Secretary of the Treasury shall be made for a period of five years from the date of such purchase, and thereafter requests by the Secretary of the Treasury for the repurchase of such shares by such associations shall be made at the discretion of the Board; but no such association shall be requested to repurchase any such shares in any one year in an amount in excess of 10 per centum of the total amount invested in such shares by the Secretary of the Treasury. Such repurchases shall be made in accordance with the rules and regulations prescribed by the Board for such associations.

"(k) When designated for that purpose by the Secretary of the Treasury, any Federal Savings and Loan Association or member of any Federal Home Loan Bank may be employed as fiscal agent of the Government under such regulations as may be prescribed by said Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be

required of it. Any Federal Savings and Loan Association or member of any Federal Home Loan Bank may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality of the United States."

Section 1 of Article XI of the Constitution of the State of Wisconsin provides:

> "Corporations without banking powers or privileges may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws or special acts enacted under the provisions of this section may be altered or replaced by the legislature at any time after their passage."

Chapter 215 of the Wisconsin Statutes, 1933, contains the law of the State of Wisconsin relative to the creation, operation, supervision, and termination of Wisconsin Building and Loan Associations.

Section 215.07 of such Chapter, granting powers to such associations, provides as follows:

> "215.07. Powers. Such loan associations shall have power:
>
> "(1) To issue stock to members; to assess and collect from members fees, dues, fines, interest, premiums and other charges, and the same shall not be held to be usurious; to permit or force members to withdraw all or part of their stock; to make loans to members; all upon such terms and conditions as may be provided in the by-laws. • • •
>
> "(5) To exercise all such powers as are necessary and proper to enable them to carry out the purpose of their organization. • • •
>
> "(7) With the advice and approval of the commissioner of banking, to become a member of and/or to

subscribe for and purchase notes and debentures issues by any federal finance or credit corporation which may be organized by act of congress for aiding and assisting building and loan associations to utilize their resources and credit, or to borrow from such finance or credit corporation, in either case in an amount not exceeding that allowed under the provisions of subsection (6) of this section.

"(8) With the approval of the commissioner, any association may borrow money from the federal home loan bank upon such terms and for such time as the laws and rules of such federal home loan bank may prescribe, the provisions in subsection (2) of section 215.07 as to the one-year time limit and as to the amount that may be borrowed, to the contrary notwithstanding."

Section 215.335 gives to state building and loan associations power to consolidate with other associations, located in the same county, with the consent of the commissioner of banking. A majority vote of the board of directors of each association, ratified and confirmed by affirmative vote of the shareholders of each such association owning at least ⅔ of the shares outstanding, at a meeting of such shareholders to be held on call of the directors, after sending notice of the time, place and object of the meeting to each shareholder of record by registered mail at least thirty days prior to said meeting, is required for consolidation.

Section 215.36, dealing with the dissolution of such associations, provides as follows:

"215.36 Dissolution (1) Any association organized or doing business under the provisions of this chapter may go into liquidation or may dissolve such association by a two-thirds vote of all its outstanding authorized capital stock at a stockholders' meeting held especially for that purpose after notice to each stock-

holder of not less than thirty days. Whenever an association has so voted to go into liquidation or to dissolve, it shall be the duty of the board of directors to cause notice of this fact to be certified, under the seal of the association by its president and secretary, to the commissioner of banking, and to cause notice thereof to be published once each week for eight successive weeks in a newspaper published in the village, city or county in which the association is located, and if no newspaper is there published then in a newspaper published at the nearest county seat, calling on all persons who may have claims against such association to present their claims to the association and make legal proof thereof at a place and within a time, not earlier than the last date of publication, to be therein specified, and to mail a similar notice to all persons whose names appear as creditors on the books of the association. * * *"

C.

Date of Judgment and of Petition for Appeal.

The decision of the Supreme Court of the State of Wisconsin was announced by written opinion and filed December 11, 1934 (R. 71). The writ of injunction issued, pursuant to said decision, on December 19, 1934 (R. 91). A motion for rehearing was filed in said Court on December 19, 1934, within the time fixed by the rules of said Court (R. 94). Said motion for rehearing was denied by final order of said Court entered on February 5, 1935 (R. 98).

Said decision of the Supreme Court of the State of Wisconsin (R. 71) is reported in the official reports of said Court in — Wisc. —, and in 257 N. W. 684.

The petition for appeal was filed in the office of the Clerk of the Supreme Court of the State of Wisconsin on April 13, 1935 (R. 1), and allowed by the Chief Justice of said Court on April 13, 1935.

D.

Nature of Case and Ruling Below.

The case in the Supreme Court of the State of Wisconsin was brought by appellees herein under section 3 of Article VII of the Constitution of the State of Wisconsin by petition for leave to commence an original action (R. 47).

Leave to commence said original action was granted appellees by said Court on September 14, 1934 (R. 58).

Appellees in said original action prayed said Court for judgment as follows:

> "(1) Declaring said attempted conversion by said Hopkins Street Building and Loan Association to be null, void and of no effect.
>
> "(2) Declaring that said asociation is under the jurisdiction of the Banking Commission of the State of Wisconsin as provided by statute.
>
> "(3) Compelling the officers and directors of said association to operate said association as a Wisconsin building and loan association or to wind up its affairs as such association in the manner provided by the statutes of the State of Wisconsin.
>
> "(4) Restraining and enjoining said association, its officers and directors, from operating as a federal savings and loan association.
>
> "(5) And for such other and further relief as may be just and equitable in the premises."

Said appellees in the said petition for leave to commence an original action (R. 51) prayed for the relief sought on the grounds that:

> (1) As appellees were informed and believed, the United States of America had no right or power to create federal savings and loan associations; that the

provisions of Section 5 of the Home Owners' Loan Act of 1933 (48 Stat. 128, 132) as amended (48 Stat. 643, 645, 646) (U. S. C. Supp., Title 12, Sec. 1464), purporting to authorize the creation of said federal savings and loan associations, were unconstitutional in that Congress had no express or implied power to create such associations; that the creation of said associations was wholly outside the powers vested in Congress by Section 8 of Article I of the Constitution or any other provision of the Constitution of the United States and was in violation of Article X of the Amendments to the Constitution of the United States.

(2) As appellees were informed and believed, the provisions of section 5 (a) of said Home Owners' Loan Act of 1933, as amended, which purported to delegate to the Federal Home Loan Bank Board the power and authority "under such rules and regulations as it may prescribe, to provide for the organizaton, incorporation, examination, operation, and regulation, of associations to be known as 'Federal Savings and Loan Associations', and to issue charters therefor" was an unconstitutional delegation of the legislative power by the Congress of the United States in violation of Section 1 of Article I of the Constitution of the United States.

(3) As appellees were informed and believed, section 5 (i) of said Home Owners' Loan Act of 1933, as amended, if construed to permit appellant association to convert itself into a federal savings and loan association without State consent, was unconstitutional in that Congress had no express or implied power to authorize such conversion under the provisions of Section 8 of Article I of the Constitution of the United States, or any other provision of the Federal Constitution, and was in violation of Article X of the Amendments to the Constitution of the United States.

(4) As appellees were informed and believed, the provisions of section 5(i) of the said Home Owners'

Loan Act of 1933, as amended, if construed to authorize said conversion without the consent of or in violation of the laws of the State of Wisconsin, were void and of no effect and in violation of the Constitution of the United States because Congress had no right or power under the Constitution of the United States to authorize the conversion of a State building and loan association into a Federal savings and loan association contrary to the laws of the State of Wisconsin or without legislation of the State of Wisconsin consenting to such conversion.

(5) As appellees were informed and believed, there were stockholders of the appellant association who did not desire the said association to convert and that the provisions of said section 5(i) denied to all stockholders of the said association who did not desire to convert the equal protection of the laws and deprived them of property without due process of law, in violation of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

(6) As appellees were informed and believed, the appellant association had, and has had, no right or power to convert itself into a Federal savings and loan association.

(7) As appellees were informed and believed, such conversion was in violation of appellant association's charter and the laws of the State of Wisconsin.

Appellants in their answer to said petition (R. 59) denied each and every conclusion of law as set forth therein. No issue of fact was presented to or tried by said Court.

Appellants in their answer prayed for judgment as follows:

"1. Declaring said conversion by said Hopkins Street Building and Loan Association, a Wisconsin corporation, into Hopkins Federal Savings and Loan Association, a national corporation, to be lawful and valid.

"2. Declaring that the Banking Commission of the State of Wisconsin has no jurisdiction over the defendants or of said Hopkins Federal Savings and Loan Association.

"3. For such other and further relief as may be just and equitable in the premises."

The proceedings were docketed in the Supreme Court of the State of Wisconsin in the August Term, 1934, as Cause No. 212.

Appellees obtained a decision declaring that the conversion of Appellant association into Hopkins Federal Savings and Loan Association is null, void and of no effect, and that appellant association is still a Wisconsin association subject to the jurisdiction of the Wisconsin Banking Commission, notwithstanding that a charter as a corporation organized and existing under and by virtue of the laws of the United States had been issued to appellant association by the Federal Home Loan Bank Board pursuant to authority vested in it by Section 5 of the Act of Congress approved June 13, 1933 (48 Stat. 128, 132), as amended by the Act of Congress approved April 27, 1934 (48 Stat. 643, 646) after appellants had complied with all the rules and regulations of such Board, and with all the provisions and requirements of said Act of Congress, and in particular, with the requirements of paragraph (i) of Section 5 of said Act (48 Stat. 128, 134) as amended, which empowered any member of a federal home loan bank to convert itself into a federal savings and loan association. Such declaration was made also notwithstanding that appellant association was a member of the Federal Home Loan Bank of Chicago. Pursuant to said decision, a writ of injunction issued, December 19, 1934, commanding appellants to operate appellant association as a Wisconsin association under the laws of the State of Wisconsin and under the direction and jurisdiction of the Wiscon-

sin Banking Commission, and enjoining and restraining appellants from operating appellant association as a federal savings and loan association.

There was drawn in question the validity of a statute of the United States, to-wit, Section 5 of the Act of Congress approved June 13, 1933 (48 Stat. 128, 132), as amended by the Act of Congress approved April 27, 1934 (48 Stat. 643, 645), and particularly paragraph (i) of Section 5 of said Act of Congress, as amended, and the decision of the Supreme Court of the State of Wisconsin, was against the validity of such statute of the United States. There was specifically set up and claimed by appellants certain titles, rights, privileges and immunities under said Statute of the United States and said decision denies such titles, rights, privileges and immunities claimed under said Statute of the United States.

Said decision held that appellant association had no power under the Statutes or Constitution of the State of Wisconsin, to divest itself of the corporate character derived from said sovereign State by accepting a charter from any other sovereign government, to-wit, the government of the United States of America, notwithstanding that under Section 2, Article VI of the Constitution of the United States said Act of Congress is the supreme law of the land. Such holding drew in question the validity of said Statute and the Constitution of the State of Wisconsin on the ground of their being repugnant to the Constitution and laws of the United States and was in favor of their validity.

The Supreme Court of the State of Wisconsin, by its decision (R. 71) filed December 11, 1934, determined that the conversion of Hopkins Street Building and Loan Association, a Wisconsin corporation, into the Hopkins Federal Savings and Loan Association, a federal corporation, was null, void and of no effect and that said association was still subject to the jurisdiction of the Banking Commission

of the State of Wisconsin, as provided by the statutes of the State of Wisconsin, and by writ of injunction (R. 91) issued, pursuant to said decision, December 19, 1934, commanded said association, its officers and directors, to operate said association as a Wisconsin building and loan association under the laws of the State of Wisconsin and under the direction and jurisdiction of the Banking Commission of the State of Wisconsin, as provided by the statutes of said State, and enjoined said association, its officers and directors, from operating said association as a federal savings and loan association.

The Supreme Court of the State of Wisconsin is the highest court in Wisconsin in which a decision in the case may be had.

E.

Cases Believed to Sustain Jurisdiction.

Thomas Murdock et al. v. *The Mayor and Aldermen of Memphis et al.*, 87 U. S. (20 Wall.) 590.

Fox River Paper Company v. *Railroad Commission of Wisconsin*, 274 U. S. 651.

Coleman J. Ward et al. v. *Board of County Commissioners of Love County, Oklahoma*, 253 U. S. 17.

Missouri, Kansas and Texas Railway Company v. *John S. Elliott*, 184 U. S. 530.

State of California v. *Deseret Water, Oil and Irrigation Company*, 243 U. S. 415.

Mallinckrodt Chemical Works v. *State of Missouri, at the relation of Seebert G. Jones*, 238 U. S. 41.

Hall Neilson v. *Clark B. Lagow et al.*, 53 U. S. (12 How.) 98.

Columbia Water Power Company v. *Columbia Electric Street Railway Light and Power Company*, 172 U. S. 475.

Jacob M. Dickinson v. *George C. Stiles*, 246 U. S. 631.
Dahnke-Walker Milling Company v. *C. T. Bondurant*, 257 U. S. 282.
Samuel H. Leathe v. *Edward L. Thomas*, 207 U. S. 93.

We respectfully submit that the Supreme Court of the United States has jurisdiction of this appeal by virtue of section 237 of the Judicial Code, as amended by the Act of Congress approved February 13, 1925 (43 Stat. 936; U. S. C., Title 28, section 344) and as further amended by the Acts of Congress approved January 31, 1928 (45 Stat. 54; U. S. C. Supp., Title 28, section 861-a) and April 26, 1928 (45 Stat. 466; U. S. C. Supp., Title 28, section 861-b).

Respectfully submitted,

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(6361-C)